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Date: October 9, 2007/Stacey Bussey/
Stacey Bussey**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re patent application of:

Applicant(s): Robert May, *et al.*

Serial No: 10/743,655

Filing Date: December 22, 2003

Examiner: Pierre E. Elisca

Art Unit: 3621

Title: CUSTOMER AGE VERIFICATION

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Dear Sir:

Applicants' representative submits this Reply Brief in response to the Examiner's Answer dated August 20, 2007. In the event any fees may be due and/or are not covered by the credit card, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1063 [SYMBP182US].

REMARKS

Claims 1-34 are currently pending and are presently under consideration. Favorable reconsideration of the subject patent application is respectfully requested in view of the comments herein. In particular, the following comments address deficiencies contended in the Examiner's Answer to applicants' Appeal Brief.

I. Regarding the Rejection of Claims 1-34 Under 35 U.S.C. §102(e)

The Examiner incorrectly maintains the rejection of claims 1-34 under 35 U.S.C. §102(e) as being anticipated by Carr, et al. (US 2004/0049401). It is respectfully requested that this rejection be reversed for at least the following reason. Carr, *et al.* fails to disclose or suggest each and every element recited in the subject claims.

For a prior art reference to anticipate, 35 U.S.C. §102 requires that “***each and every element*** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950 (Fed. Cir. 1999) (quoting *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)) (emphasis added).

Claim 1

The subject matter as claimed relates to a system for verifying a customer's age at a point-of-sale system to regulate the sale of age-restricted goods. Upon receiving identification from the customer, the machine data reader obtains and decodes data existing on the identification and generates a string related to the data that can be understood by a point-of-sale system. To this end, claim 1 recites a ***machine data reader containing a verification component that decodes the encoded data, extracts the age-related data information, and generates a data string compatible with a point-of-sale system.*** Carr, *et al.* fails to disclose or suggest such aspects.

Carr, *et al.* generally relates to obtaining information from identification documents – such as driver's licenses – and utilizing the information in security applications. More specifically, Carr, *et al.* discloses general exemplary environments where the system could be utilized. Many of the environments, particularly the one cited by the Examiner, utilize a web-cam to photograph the identification document and a separate system to evaluate, or decode, the

textual portion of the photograph in order to gather relevant information. (See pg. 3, paragraph [0059]). Thus, the capturing of the data and decoding of the data are performed in disparate systems – the decoding specifically performed at the point-of-sale system.

On the contrary, the subject matter as claimed in independent claim 1 recites a single device – the machine data reader and the components housed therein – as performing the data reading *and* decoding. Thus, the decoding does not need to be performed at the point-of-sale system as described in Carr, *et al.* To achieve this end, the subject matter as claimed generates and delivers a point-of-sale system compatible string to the point-of-sale system. Carr, *et al.*, however, merely discloses, “the web-cam captures optically-encoded data, and the terminal decodes the same.” (See pg. 3, paragraph [0059]). Thus, in the Carr, *et al.*, the reading device (the web-cam) only gathers the data (in the form of an image) and submits the image to the terminal for processing. Therefore, it is up to the terminal to decode the image and attempt to discern relevant information from the image. This requires significant processing power and capability, and regardless, is not a point-of-sale system compatible data string as recited in the subject claims. The subject matter as claimed, however, does all of the work of gathering *and* decoding internally and generates a data string compatible with the point-of-sale system. Therefore, it is readily apparent that Carr, *et al.* fails to disclose or suggest each and every element of claim 1.

The Examiner argues that where the prior art describes all claimed structural and functional relationships between the descriptive material and the substrate, but the prior art describes different material, the descriptive material is non-functional and will not be given patentable weight. (See Examiner’s Answer, pg. 5). This statement is not accurate to the situation at hand. The functional relationships between the applicants’ claimed subject matter and Carr, *et al.* are different; claim 1 recites ***extracting the age-related data information, and generates a data string compatible with a point-of-sale system.*** The claim further recites that the data string is generated ***based at least in part on the age-related data.*** This aspect is completely different from merely sending a point-of-sale system a photograph as disclosed in Carr, *et al.* In particular, as mentioned, generating a data string for a point-of-sale system provides for compatibility with a greater number of systems as the point-of-sale system need not evaluate a captured image for age-related data as in Carr, *et al.* The data string recited in the claims can indicate the age-related data, and the aspect of generating a data string for a point-of-

sale system, much less where the data string is based in part on the age-related data, as recited in the claim, is not disclosed or suggested by Carr, *et al.* Thus, at least one functional difference between the subject application and Carr, *et al.* is generating this age-related data string for transmitting to a point-of-sale system. This is simply not contemplated by Carr, *et al.*

Moreover, Carr, *et al.* is completely silent in regard to many of the dependent claims. Specifically, claim 2 recites *the data string is substantially similar to a string generated by a barcode scanner upon reading a barcode*. This aspect is not taught by Carr, *et al.* especially since the data generated by the device is a picture; hardly what is generated by a barcode scanner upon reading a barcode. Also, *the machine data reader comprising a component to identify items for sale within the point-of-sale system* as recited in claim 3 is not disclosed in Carr, *et al.* The web-cam device merely takes a picture of the consumer's license. For at least these reasons, Carr, *et al.* does not teach all elements recited in claims 2 or 3 either, and in fact, the Examiner does not appear to consider the dependent claims in turn. (See Office Action dated April 17, 2006 and Final Office Action dated October 5, 2006). Rather, the claims are rejected under this section pursuant to 4 paragraphs of Carr, *et al.* without any indication of express or inherent teaching. However, these paragraphs, and the entire publication, do not disclose or suggest each and every element of at least claims 1, 2, and 3.

Claim 18 and 28

Claim 18 of the subject application recites ***generating a string that is received by a point-of-sale system, the string identifying at least one of an age and range of ages of the individual***. However, as disclosed on pg. 3, paragraph [0059] (the section cited by the Examiner), Carr, *et al.* recites “the web-cam captures optically-encoded data, and the terminal decodes the same.” The optically-encoded data that the web-cam captures is a picture. Since the terminal decodes this data, it is evident that the terminal (point-of-sale system) receives the photo from the web-cam. On the contrary, the point-of-sale system recited in claim 18 receives an age-identifying string, not a picture. These forms of data are vastly different as the string is a primitive type that is simply-deciphered and space-efficient, whereas the picture is a large collection of pixels (that is likely binary data as well) requiring advanced processing to display, much less discern text from it. Thus, it is readily apparent that Carr, *et al.* fails to disclose or suggest each and every element of claim 18.

Furthermore, the Examiner contends that Carr, *et al.* teaches this aspect as it recites the webcam capturing optically-encoded data and the terminal decoding the same. The terminal, however, is the point-of sale terminal. Thus, as described above, the webcam merely forwards a picture and does not generate a data string for a point-of-sale that identifies an age or range of ages for an individual as recited in claim 18. For at least these reasons, Carr, *et al.* does not disclose or suggest each and every element recited in claim 18.

Claim 28 recites a similar aspect of a component that ***generates a string that is acceptable by a point-of-sale system***. As discussed *supra*, Carr, *et al.* fails to disclose or suggest such aspects of the claimed subject matter.

For at least the forgoing reasons, Carr, *et al.* fails to disclose or suggest each and every element of claims 1, 2, 3, 18, and 28, as well as claims 4-17, 19-27, and 29-34 which depend therefrom. Thus, this rejection should be reversed.

II. Regarding the Rejection of Claims 1-34 Under 35 U.S.C. §102(e)

The Examiner incorrectly maintains the rejection of claims 1-34 under 35 U.S.C. §102(e) as being anticipated by Rogers (US 2003/0178487). It is respectfully requested that this rejection be reversed for at least the following reason. Rogers fails to disclose or suggest each and every element recited in the subject claims.

As mentioned, the claimed subject matter generally relates to an age verification system that communicates age information received from an identification card to a point-of-sale system. To this end, independent claim 1 (and similarly independent claims 18 and 28) recites a machine data reader that ***generates a data string compatible with a point-of-sale system based at least in part on the age-related data; and a component that relays the age-related data string to the point-of-sale system, the point-of-sale system indexes the data string to a resident lookup table***. Rogers does not disclose such claimed aspects.

Rogers generally relates to an optical scanning unit that merely allows or denies use to a vending machine based on first inserting an identification card, such as a driver's license, before inserting payment or making a selection. In particular, in the exemplary system disclosed in Rogers, when identification is inserted, the system uses complicated methods including optical character recognition (OCR) to discern the birth date present on the face of the identification document. If the individual is not of age or if the birth date cannot be recognized, the system

will not allow the person to continue using the machine. This is contrary to the subject claims which allow a purchaser to buy other items, just not the age-restricted goods for which she does not meet the criteria. Moreover, Rogers fails to disclose a system that ***generates a data string compatible with a point-of-sale system . . . the point-of-sale system indexes the data string to a resident lookup table.***

The subject matter as claimed recites a component, the machine data reader, that generates a point-of-sale compatible string from a piece of identification and a point-of-sale system that receives this data string and indexes it to a lookup table. Rogers does not contemplate a point-of-sale system indexing anything, much less a data-string generated by a machine data reader, nor does it contemplate generating anything but a picture (as in Carr, *et al.*). Specifically, paragraph [0056] discloses obtaining a picture of identification through optical scanning, but goes on to state that “[t]his image may be sent to other parts of the system to be analyzed.” Nowhere does Rogers disclose generating a point-of-sale compatible string from information gathered from the identification card as in the subject claims. In addition, the only data the point-of-sale system receives in Rogers is not data such as a string, but rather a signal – presumably analog – such as “vend enable.” (See paragraph [0083]). This is not an ***age-related data string*** as relayed in claim 1. Thus, the point-of-sale system in Rogers cannot also be said to index a data string in a lookup table if it is not even capable of receiving such a string. Assuming *arguendo* that it could receive a data string, Rogers further fails to recite any sort of indexing accomplished by the point-of-sale system as recited in the subject claims. For at least the foregoing reasons, it is apparent that Rogers does not disclose or suggest a system that ***generates a data string compatible with a point-of-sale system . . . and a component that relays the age-related data string to the point-of-sale system, the point-of-sale system indexes the data string to a resident lookup table.***

Additionally, as with Carr, *et al.*, the Examiner has not provided indication of where aspects of the dependent claims are allegedly disclosed in Rogers. Again, at least claims 2 and 3 are not expressly or inherently disclosed or suggested by Rogers. In particular, Rogers does not contemplate data strings generated by barcode scanners as recited in claim 2, nor does the same device which verifies age (the machine data reader) identify items for sale as recited in claim 3.

In light of this, Rogers fails to teach or suggest each and every element as recited in claims 1, 2, 3, 18 and 28 (from which claims 4-17, 19-27, and 29-34 depend). Therefore, rejection of these claims should be reversed.

CONCLUSION

The subject application is believed to be in condition for allowance in view of the above comments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [SYMBP182US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

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